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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,311	03/01/2004	Dwight O. Rodgers	47583/P047US/10316465	3526

59061 7590 08/31/2007
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EXAMINER

POLLACK, MELVIN H

ART UNIT	PAPER NUMBER
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2145

MAIL DATE	DELIVERY MODE
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08/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/791,311

Applicant(s)

RODGERS ET AL.

Examiner

Melvin H. Pollack

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☒ Other: see attached office action.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 14-16, 24, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pandya et al. (7,260,635) in view of Matsubara et al. (2004,0008688).
3. Pandya teaches a method and system (abstract) of enforcing bandwidth limitations via QoS techniques (col. 1, line 1 – col. 5, line 15) for local and wireless networks (col. 5, line 15 – col. 8, line 10). In particular, a control system permits or prevents transmission of requested feed data based on client eligibility (col. 8, line 10 – col. 33, line 5).
4. Pandya does not expressly disclose reimbursement for previously lost data. Matsubara teaches a method and system (abstract) of billing in QoS systems (Paras. 1-48) that specifies bill handling and reimbursement of such systems (Paras. 49 – 151). At the time the invention was made, one of ordinary skill in the art would have added the features in order to ensure billing fairness to a user (Para. 15).
5. Claims 6-9 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pandya and Matsubara as applied to claim 1 above, and further in view of Cain et al. (7,085,290).
6. Pandya and Matsubara do not expressly disclose the timestamp-based eligibility system. Cain teaches a method and system (abstract) of providing QoS methods to mobile networks (col.

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1, line 1 – col. 5, line 15) that includes these limitations (col. 5, line 15 – col. 11, line 60). At the time the invention was made, one of ordinary skill in the art would have added Cain in order to further QoS functionality (col. 2, lines 50-60).

7. Claims 10-13, 21-23, 25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pandya, Matsubara and Cain as applied to claim 8, 17, 24 above, and further in view of Suni (7,068,660).

8. Pandya, Matsubara and Cain do not expressly disclose the particular bandwidth-limitation formulae listed in the claims. Suni teaches a method and system (abstract) of a QoS-type system (col. 1, line 1 – col. 9, line 60) that includes the various algorithmic methods of bandwidth limiting decisions (col. 9, line 60 – col. 28, line 40). At the time the invention was made, one of ordinary skill in the art would have added Suni in order to increase the efficiency and certainty of the QoS systems (col. 1, lines 35-60).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. They regard further teachings on QoS for mobile systems, and on background teachings of media streaming, bandwidth monitoring, and billing systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin H. Pollack whose telephone number is (571) 272-3887. The examiner can normally be reached on 8:00-4:30 M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melvin H Pollack
Examiner
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MHP
28 August 2007

